EXHIBIT 13
DATE 2/14/11
HB HJ 12

American Chemistry Council

10 Principles for Modernizing TSCA

The American Chemistry Council and its members support Congress' effort to modernize our nation's chemical management system. Such a system should place protecting the public health as its highest priority, and should include strict government oversight. It should also preserve America's role as the world's leading innovator and employer in the creation of safe and environmentally sound technologies and products of the business of chemistry.

The current chemical management law, the Toxic Substances Control Act (TSCA), is more than 30 years old. It should be modernized to keep pace with advances in science and technology. Moreover, the law must provide the Environmental Protection Agency with the resources and the authority to do its job effectively.

We have previously offered general concepts on which to base a modern chemical management system. This document expands upon those concepts and begins to provide more detail, which we hope will be useful to policy makers. We will continue to refine the details of our principles for modernizing TSCA and are committed to working with all stakeholders toward enactment of effective legislation.

1. Chemicals should be safe for their intended use.
    - Ensuring chemical safety is a shared responsibility of industry and EPA.
    - Industry should have the responsibility for providing sufficient information for EPA to make timely decisions about safety.
    - EPA should have the responsibility for making safe use determinations for high priority chemicals, focusing on their most significant uses and exposures.
    - Safe use determinations should integrate hazard, use, and exposure information, and incorporate appropriate safety factors.
    - Consideration of the benefits of chemicals being evaluated, the cost of methods to control their risks, and the benefits and costs of alternatives should be part of EPA's risk management decision making, but should not be part of its safe use determinations.
    - Other agencies, such as FDA and CPSC, should continue to make safety decisions for products within their own jurisdictions.
2. EPA should systematically prioritize chemicals for purposes of safe use determinations.
    - Government and industry resources should be focused on chemicals of highest concern.

- The priorities should reflect considerations such as the volume of a chemical in commerce; its uses, including whether it is formulated in products for children; its detection in biomonitoring programs; its persistent or bioaccumulative properties; and the adequacy of available information.

3. EPA should act expeditiously and efficiently in making safe use determinations.

   - Since a chemical may have a variety of uses, resulting in different exposure potentials, EPA should consider the various uses and focus on those resulting in the most significant exposures.

4. EPA should complete safe use determinations within set timeframes. Companies that manufacture, import, process, distribute, or use chemicals should be required to provide EPA with relevant information to the extent necessary for EPA to make safe use determinations.

   - Companies throughout the chain of commerce should be responsible for providing necessary hazard, use, and exposure information.

   - EPA should be authorized to require companies, as appropriate, to generate relevant new data and information to the extent reasonably necessary to make safe use determinations without having to prove risk as a prerequisite or engaging in protracted rulemaking.

   - Testing of chemicals should progress to more complex and expensive tests through a tiered approach as needed to identify hazards and exposures of specific concern.

   - To minimize animal testing, existing data should be considered prior to new testing, and validated alternatives to animal testing should be used wherever feasible.

   - Existing data and information should be leveraged in EPA's safe use determinations, including data and information from other mandatory and voluntary programs such as REACH and the U.S. High Production Volume challenge.

5. Potential risks faced by children should be an important factor in safe use determinations.

   - Safe use determinations should consider the effects of a chemical on children and their exposure to the chemical.

   - Safe use determinations should consider whether an extra margin of safety is needed to protect children.

6. EPA should be empowered to impose a range of controls to ensure that chemicals are safe for their intended use.

   - The controls could range from actions such as labeling, handling instructions, exposure limits and engineering controls to use restrictions and product bans.

- The controls should be appropriate for managing the risk, taking into account alternatives, benefits, costs, and uncertainty.

7. Companies and EPA should work together to enhance public access to chemical health and safety information.

   - EPA should make chemical hazard, use, and exposure information available to the public in electronic databases.

   - Other governments should have access to confidential information submitted under TSCA, subject to appropriate and reliable protections.

   - Companies claiming confidentiality in information submittals should have to justify those claims on a periodic basis.

   - Reasonable protections for confidential as well as proprietary information should be provided.

8. EPA should rely on scientifically valid data and information, regardless of its source, including data and information reflecting modern advances in science and technology.

   - EPA should establish transparent and scientifically sound criteria for evaluating all of the information on which it makes decisions to ensure that it is valid, using a framework that addresses the strengths and limitations of the study design, the reliability of the test methods, and the quality of the data.

   - EPA should encourage use of good laboratory practices, peer review, standardized protocols, and other methods to ensure scientific quality.

9. EPA should have the staff, resources, and regulatory tools it needs to ensure the safety of chemicals.

   - EPA's budget for TSCA activities should be commensurate with its chemical management responsibilities.

10. A modernized TSCA should encourage technological innovation and a globally competitive industry in the United States.

    - A new chemical management system should preserve and enhance the jobs and innovative products and technologies contributed by the business of American chemistry.

    - Implementation of TSCA should encourage product and technology innovation by providing industry certainty about the use of chemicals.

EXHIBIT 13
DATE 2/14/11
HB HJ 12

American Chemistry Council

February 12, 2011

To: The Honorable Harry Klock, Chair
Members, Montana House Committee on Federal Relations, Energy & Telecommunications

From: Tim Shestek, Senior Director
State Affairs

Re: HJ 12 – OPPOSE
Set for hearing, February 14, 2011

The American Chemistry Council (ACC) – the national trade association representing the leading chemical manufacturing companies and our nearly 800,000 employees – must respectfully oppose HJ 12 as drafted. First and foremost, the safety of chemical products and manufacturing processes—and the safety of chemical plant communities—is a top priority of the chemical industry. Every day we make decisions to minimize risks and take appropriate measures to manage those risks.

As drafted, HJ 12 attempts to paint a broad and unsubstantiated view that consumer products and their chemical ingredients are inherently dangerous. HJ 12 also attempts to make sweeping generalizations and conclusions about chemical exposures and diseases that are not grounded in good science; that current workplace safety standards are inadequate; and that federal chemical policy is a failure. We do not believe that consumers should be frightened into believing the products they purchase are assumed to be unsafe.

Contrary to some reports, the Toxic Substances Control Act (TSCA) has in fact required safety testing on hundreds of chemicals and has imposed appropriate controls on thousands of others. USEPA has the authority to require manufacturers to develop specific test data and can block a chemical's use or release into the marketplace until it is satisfied with the information received. More importantly, EPA exercises that authority.

While ACC believes that the products we manufacture are safe for their intended uses (otherwise we wouldn't be making them), we recognize that there is a fundamental lack of confidence in our nation's chemicals management system. This lack of confidence has led to the frequent spread of misinformation and rhetoric (as reflected in HJ 12), unnecessary product de-selection by consumers and retailers, litigation, and ill-conceived state and local laws to regulate or ban chemicals. Taken together these factors have created an uncertain business environment for the American chemistry industry and our value chain partners.

It is for this reason, ACC members support a modernization of TSCA so that consumers can have confidence that the federal regulatory system can protect against significant risks to health and the environment. I have taken the liberty of attaching our policy principles that we believe are essential for any effort to amend federal chemical policy. ACC believes these principles must be incorporated into any Congressional effort to amend TSCA so that federal law is grounded in fact-based, scientifically credible information, establishes a robust prioritization system, and fosters innovation and job creation.

While we appreciate the intent of HJ 12, we respectfully urge you to oppose this language as drafted. TSCA does not just impact the chemical industry. It also impacts those industries and businesses that develop other industrial, commercial and consumer products and processes throughout the US economy. Some 96% of manufactured goods are touched in some way by the business of chemistry.

Therefore, It is important to ensure that any statement by the State of Montana to encourage changes in federal chemical policy be done so based on credible scientific information, with input from those industries and stakeholders that would be directly affected by such changes. Unfortunately, HJ 12 falls short on both of these fronts.

It is for these reasons that ACC urges you to oppose HJ 12. If you have any questions or comments, please do not hesitate to contact me at 916-448-2581 or via email at tim_shestek@americanchemistry.com. ACC, its member companies and our employees thank you in advance for considering our views.

EXHIBIT 13
DATE 2/14/11
HB HJ 12

Gold, Cara

From: Christine Brick [chris@clarkfork.org]
Sent: Monday, February 14, 2011 1:15 PM
To: Gold, Cara
Cc: Brianna Randall
Subject: Testimony on HJ12 today at 3PM

Cara, Please distribute the following comments on HJ 12 to members of the Federal Relations, Energy, & Telecommunications committee for the hearing today at 3 PM. Thanks so much! Chris

The Clark Fork Coalition would like to lend our full support to HJ12, the Montana Resolution in Support of Safe Chemicals. As a 1,500 member group representing clean water in the Clark Fork watershed, we feel strongly that passage of this resolution is an important step in protecting community health and our water supply. It's time for the law to catch up with the toxicological science developed over the past 34 years since the Toxic Substances Control Act was passed. Without the basic toxicological information that this resolution asks for, we are essentially doing an uncontrolled experiment on our own and our children's health. And it shows in epidemiology statistics. These chemicals and their break-down products also work their way into our rivers, streams, and aquifers, threatening aquatic life as well as our drinking water supplies. It's time to ask for a common-sense update to better protect our communities and our environment. We urge you to support this resolution.

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Christine Brick, Ph.D.
Science Director
Clark Fork Coalition
P.O. Box 7593
Missoula, MT 59807
ph. 406-542-0539 ext. 202
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EXHIBIT 13
DATE 2/14/11
HB 392

Senator Jacob Howard states the intent of the Fourteenth Amendment published in The Congressional Record, May 30, 1866

provided by the office of
Congressman Nathan Deal (GA-9)
2133 Rayburn House Office Building
Washington, DC 20515
June, 2009

The motion was agreed to; and Messrs. WILSON, ANTHONY, and HENDRICKS were appointed conferees on the part of the Senate.

FORTIFICATION APPROPRIATION BILL.

The Senate proceeded to consider its amendment to the bill (H. R. No. 255) making appropriations for the construction, preservation, and repair of certain fortifications and other works of defense for the year ending June 30, 1867, which was disagreed to by the House of Representatives.

Mr. FESSENDEN. I move that the Senate insist on its amendment, and agree to the conference asked by the House.

The motion was agreed to; and Messrs. MORGAN, MORRILL, and SAULSBURY were appointed conferees on the part of the Senate.

WOMEN'S HOSPITAL.

Mr. MORRILL. There is a bill on the table which comes from the House of Representatives amended. I desire to call it up and concur in the amendments. It is Senate bill No. 167, to incorporate the Women's Hospital Association of the District of Columbia.

Mr. HOWARD. It is very nearly one o'clock, and I hope the joint resolution to amend the Constitution will be taken up.

Mr. MORRILL. This is pending simply on a question of concurring in the amendments made by the House to a bill of the Senate, and will not occupy two minutes.

Mr. HOWARD. If it does not go beyond one o'clock I shall not object.

Mr. MORRILL. Let it come up. I move to take it up.

The motion was agreed to; and the Senate proceeded to consider the amendments of the House of Representatives to the bill (S. No. 167) to incorporate the Women's Hospital Association of the District of Columbia.

The PRESIDENT *pro tempore*. The first amendment of the House has already been concurred in.

The Secretary read the second amendment of the House of Representatives, which was in the first section, line three, after the name "Adelaide J. Brown," to strike out all the names to and including that of "Mary K. Lewis," in line seven, except that of "Mary W. Kelly," and to insert "Elmira W. Knap, Mary C. Havermeir, Mary Ellen Norment, Jane Thompson, Maria L. Harkness, Isabella Margaret Washington, and Mary F. Smith."

Mr. MORRILL. I move that the Senate concur in that amendment.

The motion was agreed to.

The next amendment was after the word "Columbia," at the end of section one, to add "by the name of the Columbia Hospital for Women and Lying-in Asylum."

Mr. MORRILL. I move that the Senate concur in that amendment.

The motion was agreed to.

The next amendment was in section two, line two to strike out the word "twelve" and insert "twenty-four" as the number of directors.

The amendment was concurred in.

The next amendment was in section three, after the word "directors" at the end of line three to insert "to consist of the first twelve of the above-named incorporators."

The amendment was concurred in.

The next amendment was in section four, line one, after the word "the" to insert "first twelve."

The amendment was concurred in.

The next amendment was in section five, after the word "Women" in line three, to insert "and Lying-in Asylum."

The amendment was concurred in.

The next amendment was in section five, line four, after the word "with" to insert "board, lodging."

The amendment was concurred in.

The PRESIDENT *pro tempore*. The amendments are completed.

DEATH OF GENERAL SCOTT.

The PRESIDENT *pro tempore* laid before the Senate the following message from the President of the United States:

To the Senate and House of Representatives:

With sincere regret I announce to Congress that Winfield Scott, its lieutenant general in the Army of the United States, departed this life at West Point, in the State of New York, on the 29th day of May instant, at eleven o'clock in the forenoon. I feel well assured that Congress will share in the grief of the nation which must result from its bereavement of a citizen whose high fame is identified with the military history of the Republic.

ANDREW JOHNSON.

WASHINGTON, *May* 30, 1866.

Mr. WILSON. I offer the following resolution:

Resolved by the Senate, (the House of Representatives concurring,) That the Committee on Military Affairs and the Militia of the Senate and the Committee on Military Affairs of the House of Representatives, be, and they are hereby, appointed a joint committee of the two Houses of Congress to take into consideration the message of the President of the United States announcing to Congress the death of Lieutenant General Winfield Scott, and to report what method should be adopted by Congress to manifest their appreciation of the high character, tried patriotism, and distinguished public services of Lieutenant General Winfield Scott, and their deep sensibility upon the announcement of his death.

There being no objection, the Senate proceeded to consider the resolution; and it was adopted unanimously.

Mr. WILSON. As this committee is to be a joint one, and the resolution will have to be acted on by the House of Representatives, I move, for the present, that the message of the President be laid upon the table, and printed.

The motion was agreed to.

RECONSTRUCTION.

Mr. HOWARD. I now move to take up House joint resolution No. 127.

The motion was agreed to; and the Senate, as in Committee of the Whole, resumed the consideration of the joint resolution (H. R. No. 127) proposing an amendment to the Constitution of the United States.

The PRESIDENT *pro tempore*. The question is on the amendments proposed by the Senator from Michigan. [Mr. HOWARD.]

Mr. HOWARD. The first amendment is to section one, declaring that "all persons born in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the States wherein they reside." I do not propose to say anything on that subject except that the question of citizenship has been so fully discussed in this body as not to need any further elucidation, in my opinion. This amendment which I have offered is simply declaratory of what I regard as the law of the land already, that every person born within the limits of the United States, and subject to their jurisdiction, is by virtue of natural law and national law a citizen of the United States. This will not, of course, include persons born in the United States who are foreigners, aliens, who belong to the families of ambassadors or foreign ministers accredited to the Government of the United States, but will include every other class of persons. It settles the great question of citizenship and removes all doubt as to what persons are or are not citizens of the United States. This has long been a great desideratum in the jurisprudence and legislation of this country.

The PRESIDENT *pro tempore*. The first amendment proposed by the Senator from Michigan will be read.

The Secretary read the amendment, which was in line nine, after the words "section one," to insert:

All persons born in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the States wherein they reside.

So that the section will read:

SEC. 1. All persons born in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the States wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Mr. DOOLITTLE. I presume the honorable Senator from Michigan does not intend by this amendment to include the Indians. I move, therefore, to amend the amendment—I presume he will have no objection to it—by inserting after the word "thereof" the words "excluding Indians not taxed." The amendment would then read:

All persons born in the United States, and subject to the jurisdiction thereof, excluding Indians not taxed, are citizens of the United States and of the States wherein they reside.

Mr. HOWARD. I hope that amendment to the amendment will not be adopted. Indians born within the limits of the United States, and who maintain their tribal relations, are not, in the sense of this amendment, born subject to the jurisdiction of the United States. They are regarded, and always have been in our legislation and jurisprudence, as being *quasi* foreign nations.

Mr. COWAN. The honorable Senator from Michigan has given this subject, I have no doubt, a good deal of his attention, and I am really desirous to have a legal definition of "citizenship of the United States." What does it mean? What is its length and breadth? I would be glad if the honorable Senator in good earnest would favor us with some such definition. Is the child of the Chinese immigrant in California a citizen? Is the child of a Gypsy born in Pennsylvania a citizen? If so, what rights have they? Have they any more rights than a sojourner in the United States? If a traveler comes here from Ethiopia, from Australia, or from Great Britain, he is entitled, to a certain extent, to the protection of the laws. You cannot murder him with impunity. It is murder to kill him, the same as it is to kill another man. You cannot commit an assault and battery on him, I apprehend. He has a right to the protection of the laws; but he is not a citizen in the ordinary acceptation of the word.

It is perfectly clear that the mere fact that a man is born in the country has not heretofore entitled him to the right to exercise political power. He is not entitled, by virtue of that, to be an elector. An elector is one who is chosen by the people to perform that function, just the same as an officer is one chosen by the people to exercise the franchises of an office. Now, I should like to know, because really I have been puzzled for a long while and have been unable to determine exactly, either from conversation with those who ought to know, who have given this subject their attention, or from the decisions of the Supreme Court, the lines and boundaries which circumscribe that phrase, "citizen of the United States." What is it?

So far as the courts and the administration of the laws are concerned, I have supposed that every human being within their jurisdiction was in one sense of the word a citizen, that is, a person entitled to protection; but in so far as the right to hold property, particularly the right to acquire title to real estate, was concerned, that was a subject entirely within the control of the States. It has been so considered in the State of Pennsylvania; and aliens and others who acknowledge no allegiance, either to the State or to the General Government, may be limited and circumscribed in that particular. I have supposed, further, that it was essential to the existence of society itself, and particularly essential to the existence of a free State, that it should have the power, not only of declaring who should exercise political power within its boundaries, but that if it were overrun by another and a different race, it would have the right to absolutely expel them. I do not know that there is any danger to many of the States in this Union; but is it proposed that the people of Cal-

Defining "American"

Birthright Citizenship and the Original Understanding of the 14th Amendment

James C. Ho

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Defining "American"

Birthright Citizenship and the Original Understanding of the 14th Amendment

James C. Ho

In response to increasing frustration with illegal immigration, lawmakers and activists are hotly debating various proposals to combat incentives to enter the United States outside legal channels. Economic opportunity is the strongest attraction, of course. But another magnet, some contend, is a long-standing provision of U.S. law that confers citizenship upon persons born within our borders.[1]

There is increasing interest in repealing birthright citizenship for the children of aliens – especially undocumented persons. According to one recent poll, 49 percent of Americans believe that a child of an illegal alien should not be entitled to U.S. citizenship (41 percent disagree).[2] Legal scholars including Judge Richard Posner contend that birthright citizenship for the children of aliens may be repealed by statute.[3] Members of the current Congress have introduced legislation and held hearings,[4] following bipartisan efforts during the 1990s led by now-Senate Minority Leader Harry Reid

Jim Ho will join the Dallas office of Gibson, Dunn & Crutcher LLP this fall. He has previously served as chief counsel of the U.S. Senate Judiciary Subcommittees on the Constitution and Immigration under the chairmanship of Senator John Cornyn (R-TX) and as a law clerk to Justice Clarence Thomas. Jim can be reached by e-mail at JamesCHo@stanfordalumni.org.

1 8 U.S.C. § 1401.

2 www.rasmussenreports.com/2005/Immigration%20November%207.htm.

3 Oforji v. Ashcroft, 354 F.3d 609, 620–21 (7th Cir. 2003) (Posner, J., concurring); John C. Eastman & Edwin Meese III, Brief of Amicus Curiae The Claremont Institute Center for Constitutional Jurisprudence, Hamdi v. Rumsfeld, No. 03–6696 (Eastman/Meese Brief) (see also www.fed-soc.org/pdf/birthright.pdf; www.heritage.org/Research/LegalIssues/lm18.cfm); Charles Wood, Losing Control of America's Future, 22 Harv. J.L. & Pub. Pol'y 465, 503–22 (1999); Peter Schuck & Rogers Smith, Citizenship Without Consent (1985).

4 E.g., H.R. 698; H.R. 3700, § 201; H.R. 3938, § 701; Dual Citizenship, Birthright Citizenship, and the Meaning of Sovereignty: Hearing Before the Subcomm. on Immigration, Border Security, and Claims of the H. Comm. on the Judiciary, 109th Cong. (2005) ("2005 House Hearing"). In March, Senator Tom Coburn circulated an amendment in committee to repeal birthright citizenship (a vote was never taken), while Senator Charles Schumer, a proponent of birthright citizenship, asked now-Justice Samuel A. Alito for his views during his confirmation hearings.

and others.[5]

These proposals raise serious constitutional questions, however. Birthright citizenship is guaranteed by the Fourteenth Amendment. That birthright is protected no less for children of undocumented persons than for descendants of *Mayflower* passengers.

The Fourteenth Amendment begins: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States." Repeal proponents contend that this language does not apply to the children of aliens – whether legal or illegal (with the possible exception of lawful permanent residents) – because such persons are not "subject to [U.S.] jurisdiction." But text, history, judicial precedent, and Executive Branch interpretation confirm that the Citizenship Clause reaches most U.S.-born children of aliens, including illegal aliens.

One might argue that the Constitution's emphasis on place of birth is antiquated. The requirement that only natural born citizens may serve as President or Vice President has been condemned on similar grounds.[6] But a constitutional amendment is the only way to expand eligibility for the Presidency, and it is likewise the only way to restrict birthright citizenship.[7]

We begin, of course, with the text of the Citizenship Clause.

To be "subject to the jurisdiction" of the U.S. is simply to be subject to the authority of the U.S. government.[8] The phrase thus covers the vast majority of persons within our borders who are required to obey U.S. laws. And obedience, of course, does not turn on immigration status, national allegiance, or past compliance. All must obey.

Common usage confirms this understanding. When we speak of a business that is subject to the jurisdiction of a regulatory agency, it must follow the laws of that agency, whether it likes it or not.[9] When we speak of an individual who is subject to the jurisdiction of a court, he must follow the judgments and orders of that court, whether he likes it or not.[10] As Justice Scalia noted just a year ago, when a statute renders a particular class of persons "subject to the jurisdiction of the United States," Congress "has made clear its

5 E.g., S. 1351, 103rd Cong., § 1001 (1993); 139 Cong. Rec. 21709–12 (1993) (Sen. Reid); H.R. 3862, 103rd Cong., § 401 (1994); Societal and Legal Issues Surrounding Children Born in the United States to Illegal Alien Parents: Joint Hearing Before the Subcomm. on Immigration and Claims and the Subcomm. on the Constitution of the H. Comm. on the Judiciary, 104th Cong. (1995); Citizenship Reform Act of 1997; and Voter Eligibility Verification Act: Hearing Before the Subcomm. on Immigration and Claims of the H. Comm. on the Judiciary, 105th Cong. (1997).

6 E.g., James C. Ho, President Schwarzenegger – Or At Least Hughes?, 7 Green Bag 2d 108 (2004).

7 Constitutional amendments repealing birthright citizenship have been proposed. H.J. Res. 41, 109th Cong. (2005); H.J. Res. 64, 104th Cong. (1995). See also Michael Sandler, Toward a More Perfect Definition of 'Citizen', CQ Weekly, Feb. 13, 2006, at 388 (quoting Rep. Mark Foley, who supports repeal by constitutional amendment: "My view is the 14th Amendment was rather certain in its application ... . Legislatively, I still am not comfortable with [the statutory approach]. I think a court could strike it down.").

8 E.g., Black's Law Dictionary defines "jurisdiction" as "[a] government's general power to exercise authority."

9 Sprietsma v. Mercury Marine, 537 U.S. 51, 69 (2002) (respecting recreational boats "subject to [the] jurisdiction" of the Coast Guard); Lorillard Tobacco Co. v. Reilly, 533 U.S. 525, 544 (2001) (respecting electronic communications media "subject to the jurisdiction of the FCC").

10 Rumsfeld v. Padilla, 542 U.S. 426, 445 (2004) (respecting government officials "subject to [the] habeas jurisdiction" of a particular court).

intent to extend its laws" to them.[11]

Of course, when we speak of a person who is subject to our jurisdiction, we do not limit ourselves to only those who have sworn allegiance to the U.S. Howard Stern need not swear allegiance to the FCC to be bound by Commission orders. Nor is being "subject to the jurisdiction" of the U.S. limited to those who have always complied with U.S. law. Criminals cannot immunize themselves from prosecution by violating Title 18. Likewise, aliens cannot immunize themselves from U.S. law by entering our country in violation of Title 8. Indeed, illegal aliens are such *because* they are subject to U.S. law.

Accordingly, the text of the Citizenship Clause plainly guarantees birthright citizenship to the U.S.-born children of all persons subject to U.S. sovereign authority and laws. The clause thus covers the vast majority of lawful and unlawful aliens. Of course, the jurisdictional requirement of the Citizenship Clause must do something – and it does. It excludes those persons who, for some reason, are immune from, and thus not required to obey, U.S. law. Most notably, foreign diplomats and enemy soldiers – as agents of a foreign sovereign – are not subject to U.S. law, notwithstanding their presence within U.S. territory. Foreign diplomats enjoy diplomatic immunity,[12] while lawful enemy combatants enjoy combatant immunity.[13] Accordingly, children born to them are not entitled to birthright citizenship under the Fourteenth Amendment.

This conclusion is confirmed by history.

The Citizenship Clause was no legal innovation. It simply restored the longstanding English common law doctrine of *jus soli*, or citizenship by place of birth.[14] Although the doctrine was initially embraced in early American jurisprudence,[15] the U.S. Supreme Court abrogated *jus soli* in its infamous *Dred Scott* decision, denying birthright citizenship to the descendents of slaves.[16] Congress approved the Citizenship Clause to overrule *Dred Scott* and elevate *jus soli* to the status of constitutional law.[17]

When the House of Representatives first approved the measure that would eventually become the Fourteenth Amendment, it did not contain language guaranteeing citizenship.[18] On May 29, 1866, six days after the Senate began its deliberations, Senator Jacob Howard (R-MI) proposed language pertaining to citizenship. Following extended debate the next day, the Senate adopted Howard's language.[19] Both chambers

11 Spector v. Norwegian Cruise Line Ltd., 125 S. Ct. 2169, 2194–95 (2005) (Scalia, J., dissenting). The statement was joined by Chief Justice Rehnquist and Justice O'Connor, and no justice took issue with it.

12 Abdulaziz v. Metropolitan Dade County, 741 F.2d 1328, 1329–31 (11th Cir. 1984).

13 United States v. Lindh, 212 F. Supp. 2d 541, 553–58 (E.D. Va. 2002).

14 Calvin v. Smith, 77 Eng. Rep. 377 (K.B. 1608).

15 Inglis v. Trustees of the Sailor's Snug Harbor, 28 U.S. 99, 164 (1830) (Story, J.) ("[n]othing is better settled at the common law" than *jus soli*); Lynch v. Clarke, 1 Sandford Ch. 583, 646 (N.Y. 1844); Polly J. Price, Natural Law and Birthright Citizenship in *Calvin's Case* (1608), 9 Yale J. L. & Humanities 73, 138–40 (1997).

16 Scott v. Sanford, 60 U.S. 393 (1857).

17 Saenz v. Roe, 526 U.S. 489, 502 n.15 (1999); In re Look Tin Sing, 21 F. 905, 909–10 (C.C. D. Cal. 1884).

18 Cong. Globe, 39th Cong., 1st Sess. 2545 (1866).

19 Id. at 2869, 2890–97.

Senator Jacob Howard of Michigan: "[E]very person born within the limits of the United States, and subject to their jurisdiction, is by virtue of natural law and national law a citizen of the United States. This will not, of course, include persons born in the United States who are foreigners, aliens, who belong to the families of ambassadors or foreign ministers accredited to the Government of the United States, but will include every other class of persons." Cong. Globe, 39th Cong., 1st Sess. 2890 (1866). Library of Congress, Brady-Handy Photograph Collection.

subsequently approved the constitutional amendment without further discussion of birthright citizenship,[20] so the May 30, 1866 Senate debate offers the best insight into Congressional intent.

Senator Howard's brief introduction of his amendment confirmed its plain meaning:

> Mr. HOWARD. ... This amendment which I have offered is simply declaratory of what I regard as the law of the land already, that every person born within the limits of the United States, and subject to their jurisdiction, is by virtue of natural law and national law a citizen of the United States. *This will not, of course, include persons born in the United States who are foreigners, aliens, who belong to the families of ambassadors or foreign ministers accredited to the Government of the United States, but will include every other class of persons.*"[21]

This understanding was universally adopted by other Senators. Howard's colleagues vigorously debated the *wisdom* of his amendment – indeed, some opposed it precisely *because* they opposed extending birthright citizenship to the children of aliens of different races. But no Senator disputed the *meaning* of the amendment with respect to alien children.

Senator Edgar Cowan (R-PA) – who would later vote against the entire constitutional amendment anyway – was the first to speak in opposition to extending birthright citizenship to the children of foreigners. Cowan declared that, "if [a state] were overrun by another and a different race, it would have the right to absolutely expel them." He feared that the Howard amendment would effectively deprive states of the authority to expel persons of different races – in particular, the Gypsies in his home state of Pennsylvania and the Chinese in California – by granting their children citizenship and thereby enabling foreign populations to overrun the country. Cowan objected especially to granting birthright citizenship to the children of aliens who "owe [the U.S.] no allegiance [and] who pretend to owe none," and to those who regularly commit "trespass" within the U.S.[22]

In response, proponents of the Howard

20 Id. at 3042, 3149.

21 Id. at 2890 (emphasis added).

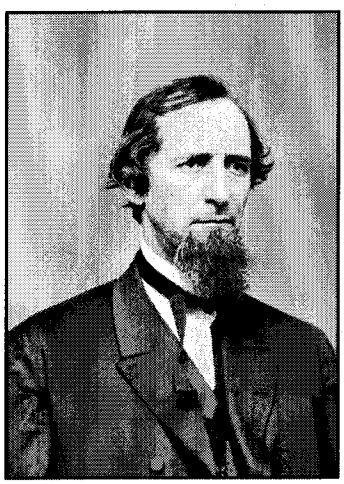
22 Space constraints, if nothing else, prevent me from quoting Cowan's racially charged remarks here in full, but see id. at 2890–91.

amendment *endorsed* Cowan's interpretation. Senator John Conness (R-CA) responded specifically to Cowan's concerns about extending birthright citizenship to the children of Chinese immigrants:

> The proposition before us ... relates simply in that respect to the children begotten of Chinese parents in California, and it is proposed to declare that they shall be citizens. ... I am in favor of doing so. ... We are entirely ready to accept the provision proposed in this constitutional amendment, that the children born here of Mongolian parents shall be declared by the Constitution of the United States to be entitled to civil rights and to equal protection before the law with others.

Conness acknowledged Cowan's dire predictions of foreign overpopulation, but explained that, although legally correct, Cowan's parade of horribles would not be realized, because most Chinese would not take advantage of such rights although entitled to them. He noted that most Chinese work and then return to their home countries, rather than start families in the U.S. Conness thus concluded that, if Cowan "knew as much of the Chinese and their habits as he professes to do of the Gypsies, ... he would not be alarmed."[23]

No Senator took issue with the consensus interpretation adopted by Howard, Cowan, and Conness. To be sure, one interpretive dispute did arise. Senators disagreed over whether the Howard amendment would extend birthright citizenship to the children of Indians. For although Indian tribes resided within U.S. territory, weren't they also sovereign entities not subject to the jurisdiction of Congress?

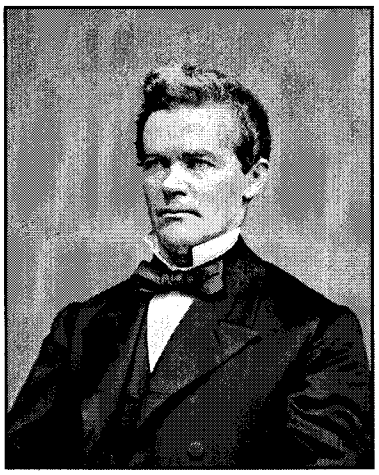


Senator Edgar Cowan of Pennsylvania: "[I]s it proposed that the people of California are to remain quiescent while they are overrun by a flood of immigration of the Mongol race? Are they to be immigrated out of house and home by Chinese? ... It is utterly and totally impossible to mingle all the various families of men, from the lowest form of the Hottentot up to the highest Caucasian, in the same society." Cong. Globe, 39th Cong., 1st Sess. 2890-91 (1866). Library of Congress, Brady-Handy Photograph Collection.

Some Senators clearly thought so. Howard urged that Indian tribes "always have been in our legislation and jurisprudence, as being *quasi* foreign nations" and thus could not be deemed subject to U.S. law. Senator Lyman Trumbull (D-IL) agreed, noting that "it would be a violation of our treaty obligations ... to extend our laws over these Indian tribes with whom we have made treaties saying we would not do it." Trumbull insisted that Indian tribes "are not subject to our jurisdiction in the sense of owing allegiance solely to the United States," for "[i]t is only those persons who come completely within our jurisdiction, *who are subject to our laws*, that we think of making citizens."[24]

23 Id. at 2891. Like Cowan, Conness also had bad things to say about the Chinese. Id. at 2891–92. But to his credit, Conness at least recognized their need for civil rights protections. Id. at 2892.

24 Id. at 2890, 2895 (Sen. Howard); id. at 2893, 2894 (Sen. Trumbull) (emphasis added).



Senator John Conness of California: "The proposition before us ... relates simply in that respect to the children begotten of Chinese parents in California, and it is proposed to declare that they shall be citizens. ... I am in favor of doing so." Cong. Globe, 39th Cong., 1st Sess. 2891 (1866). Library of Congress, Brady-Handy Photograph Collection.

Senators Reverdy Johnson (D-MD) and Thomas Hendricks (D-IN) disagreed, contending that the U.S. could extend its laws to Indian tribes and had done so on occasion.[25] Senator James R. Doolittle (R-WI) proposed to put all doubt to rest by adding the words "excluding Indians not taxed" (borrowing from language in Article I) to the Howard amendment.[26] But although there was virtual consensus that birthright citizenship should not be extended to the children of Indian tribal members,[27] a majority of Senators saw no need for clarification. The Senate ultimately defeated Doolittle's amendment by a 10–30 vote, and then adopted the Howard text without recorded vote.[28]

Whatever the correct legal answer to the question of Indian tribes, it is clearly beside the point. The status of Indian tribes under U.S. law may have been ambiguous to members of the 39th Congress. But there is no doubt that foreign countries enjoy no such sovereign status within U.S. borders. And there is likewise no doubt that U.S. law applies to their nationals who enter U.S. territory.

Repeal proponents contend that history supports their position.

First, they quote Howard's introductory remarks to state that birthright citizenship "will not, of course, include ... foreigners."[29] But that reads Howard's reference to "aliens, who belong to the families of ambassadors or foreign ministers" out of the sentence. It also renders completely meaningless the subsequent dialogue between Senators Cowan and Conness over the wisdom of extending birthright citizenship to the children of Chinese immigrants and Gypsies.

Second, proponents claim that the Citizenship Clause protects only the children of persons who owe complete *allegiance* to the U.S. – namely, U.S. citizens. To support this contention, proponents cite stray references to "allegiance" by Senator Trumbull (a presumed authority in light of his Judiciary Committee chairmanship) and others, as well as the text of the 1866 Civil Rights Act.

But the text of the Citizenship Clause requires "jurisdiction," not "allegiance." Nor did Congress propose that "all persons born

25 Id. at 2893–94 (Sen. Johnson); id. at 2894–95 (Sen. Hendricks).

26 Id. at 2890, 2892–93, 2897.

27 Only Willard Saulsbury, Sr. (D-DE) expressed disagreement. Id. at 2897.

28 Id. at 2897.

29 Smith & Lungren; 2005 House Hearing at 3 (Rep. L. Smith); John C. Eastman, Constitution's Citizenship Clause Misread, Wall St. J., Dec. 7, 2005, at A19; John C. Eastman, Citizens by Right, or by Consent?, San Francisco Chron., Jan. 2, 2006, at B9.

to U.S. citizens are citizens of the United States." To the contrary, Senator Cowan opposed the Citizenship Clause precisely because it would extend birthright citizenship to the children of

> people who ... *owe [my state] no allegiance*; who pretend to owe none; who recognize no authority in her government; who have a distinct, independent government of their own ...; who pay no taxes; who never perform military service; who do nothing, in fact, which becomes the citizen, and perform none of the duties which devolve upon him.[30]

Moreover, Cowan's unambiguous rejection of "allegiance" formed an essential part of the consensus understanding of the Howard text. By contrast, the stray references by Trumbull and others to "allegiance" were made during the debate over tribal sovereignty, not alienage generally. Indeed, Trumbull himself confirmed that the Howard text covers all persons "who are subject to our laws."[31]

The 1866 Civil Rights Act likewise offers no support. Enacted less than two months before the Senate adopted the Howard amendment, the Act guarantees birthright citizenship to "all persons born in the United States and *not subject to any foreign power*, excluding Indians not taxed."[32] Repeal proponents contend that all aliens are "subject to a[] foreign power," and that this is relevant because the Fourteenth Amendment was ratified to ensure the Act's validity.

But in fact, proponents and opponents of birthright citizenship alike consistently interpreted the Act, just as they did the Fourteenth Amendment, to cover the children of aliens. In one exchange, Cowan, in a preview of his later opposition to the Howard text, "ask[ed] whether [the Act] will not have the effect of naturalizing the children of Chinese and Gypsies born in this country?" Trumbull replied: "Undoubtedly. ... [T]he child of an Asiatic is just as much a citizen as the child of a European."[33]

Finally, repeal proponents point out that our nation was founded upon the doctrine of consent of the governed, not the feudal principle of perpetual allegiance to the sovereign.[34] But that insight explains only why U.S. citizens enjoy the right of expatriation – that is, the right to renounce their citizenship – not whether U.S.-born persons are entitled to birthright citizenship.

History thus confirms that the Citizenship Clause applies to the children of aliens. To be sure, members of the 39th Congress may not have specifically contemplated extending birthright citizenship to the children of *illegal* aliens, for Congress did not generally restrict migration until well after adoption of the Fourteenth Amendment.[35]

30 Cong. Globe, 39th Cong., 1st Sess. 2891 (emphasis added).

31 Id. at 2893. See also id. at 2895 (Sen. Hendricks) (if "[w]e can make [a person] obey our laws, ... being liable to such obedience he is subject to the jurisdiction of the United States").

32 14 Stat. 27, § 1 (emphasis added).

33 Cong. Globe, 39th Cong., 1st Sess. 498. Moreover, as John Eastman (a leading repeal proponent) has conceded, the Fourteenth Amendment's positively phrased text ("subject to ... jurisdiction") "might easily have been intended to describe a broader grant of citizenship than the negatively-phrased language from the 1866 Act" ("not subject to any foreign power"). 2005 House Hearing at 63; www.heritage.org/Research/LegalIssues/lm18.cfm. Eastman cites the legislative history of the Fourteenth Amendment to eliminate the gap – suggesting that the Act does little work for repeal proponents.

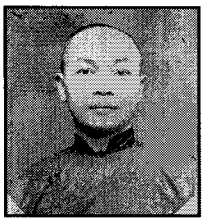
34 Edward J. Erler, From Subjects to Citizens: The Social Compact Origins of American Citizenship, in The American Founding and the Social Compact 163–97 (2003).

35 Kleindienst v. Mandel, 408 U.S. 753, 761 (1972) ("Until 1875 alien migration to the United States was unrestricted.").

But nothing in text or history suggests that the drafters intended to draw distinctions between different categories of aliens. To the contrary, text and history confirm that the Citizenship Clause reaches all persons who are subject to U.S. jurisdiction and laws, regardless of race or alienage.

The original understanding of the Citizenship Clause is further reinforced by judicial precedent.

In *United States v. Wong Kim Ark* (1898), the U.S. Supreme Court confirmed that a child born in the U.S., but to alien parents, is nevertheless entitled to birthright citizenship under the Fourteenth Amendment. Wong Kim Ark was born in San Francisco to alien Chinese parents who "were never employed in any diplomatic or official capacity under the emperor of China." After traveling to China on a temporary visit, he was denied permission to return to the U.S.; the government argued that he was not a citizen, notwithstanding his U.S. birth, through an aggressive reading of the Chinese Exclusion Acts.[36]



The U.S. government argued that Wong Kim Ark, though born in California, was not entitled to U.S. citizenship. Its reply brief noted that Chinese laborers are "apparently incapable of assimilating with our people" (p. 6, quoting Fong Yue Ting v. United States (1893)). The Court sided with Wong by a vote of 6–2. National Archives and Records Administration.

By a 6–2 vote, the Court rejected the government's argument:

> The fourteenth amendment affirms the ancient and fundamental rule of citizenship by birth within the territory, in the allegiance and under the protection of the country, *including all children here born of resident aliens*, with the exceptions or qualifications (as old as the rule itself) of children of foreign sovereigns or their ministers, or born on foreign public ships, or of enemies within and during a hostile occupation of part of our territory, and with the single additional exception of children of members of the Indian tribes owing direct allegiance to their several tribes. ... To hold that the fourteenth amendment of the constitution excludes from citizenship the children born in the United States of *citizens or subjects of other countries*, would be to deny citizenship to thousands of persons of English, Scotch, Irish, German, or other European parentage, who have always been considered and treated as citizens of the United States.[37]

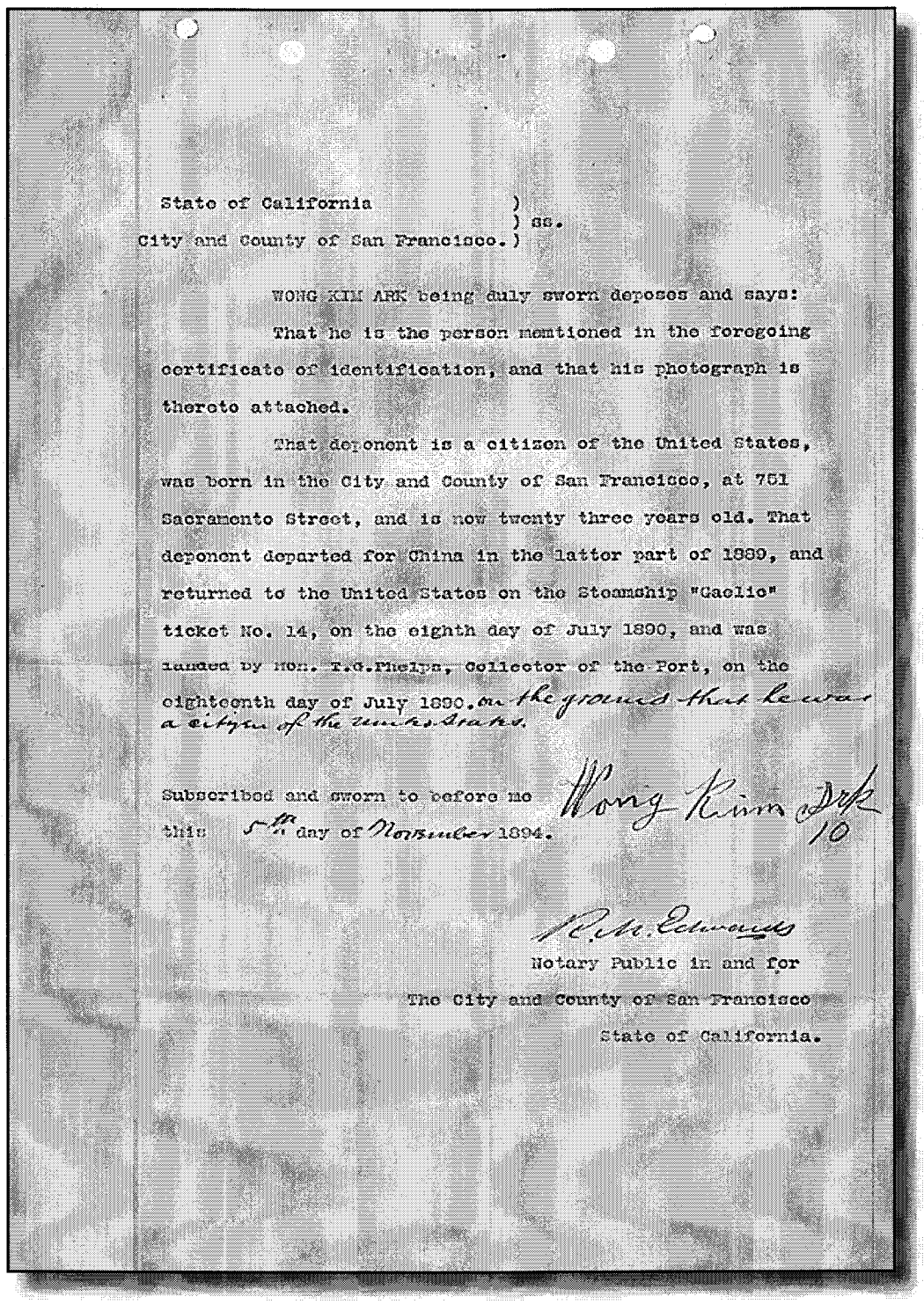
This sweeping language reaches all aliens regardless of immigration status.[38] To be sure, the question of illegal aliens was not explicitly presented in *Wong Kim Ark*. But any doubt was put to rest in *Plyler v. Doe* (1982).

Plyler construed the Fourteenth Amendment's Equal Protection Clause, which requires every State to afford equal protection of the laws "to any person *within its jurisdiction*." By a 5–4 vote, the Court held that Texas cannot deny free public school education to undocumented children, when it provides such education to others. But

36 169 U.S. 649, 652–53.

37 Id. at 693–94 (emphasis added); see also id. at 682.

38 The Heritage Guide to the Constitution 385 (2005) ("*Wong Kim Ark* is certainly broad enough to include the children born in the United States of illegal ... immigrants").



State of California)
) ss.
City and County of San Francisco.)

WONG KIM ARK being duly sworn deposes and says:

That he is the person mentioned in the foregoing certificate of identification, and that his photograph is thereto attached.

That deponent is a citizen of the United States, was born in the City and County of San Francisco, at 751 Sacramento Street, and is now twenty three years old. That deponent departed for China in the latter part of 1889, and returned to the United States on the Steamship "Gaelic" ticket No. 14, on the eighth day of July 1890, and was landed by Hon. T.G.Phelps, Collector of the Port, on the eighteenth day of July 1890. on the grounds that he was a citizen of the United States.

Subscribed and sworn to before me this 5th day of November 1894.

Wong Kim Ark
10

R.M. Edwards
Notary Public in and for
The City and County of San Francisco
State of California.

Wong Kim Ark's statement of citizenship.
National Archives and Records Administration.

although the Court splintered over the specific question of public education, *all nine justices agreed* that the Equal Protection Clause protects legal and illegal aliens alike. And all nine reached that conclusion precisely because illegal aliens are "subject to the jurisdiction" of the U.S., no less than legal aliens and U.S. citizens.

Writing for the majority, Justice Brennan explicitly rejected the contention that "persons who have entered the United States illegally are not 'within the jurisdiction' of a State even if they are present within a State's boundaries and subject to its laws. Neither our cases nor the logic of the Fourteenth Amendment supports that constricting construction of the phrase 'within its jurisdiction.'" In reaching this conclusion, Brennan invoked the Citizenship Clause and the Court's analysis in *Wong Kim Ark*, noting that

> "[e]very citizen or subject of another country, while domiciled here, is within the allegiance and the protection, and consequently subject to the jurisdiction, of the United States." ... [N]o *plausible distinction with respect to Fourteenth Amendment 'jurisdiction' can be drawn between resident aliens whose entry into the United States was lawful, and resident aliens whose entry was unlawful.*[39]

The four dissenting justices – Chief Justice Burger, joined by Justices White, Rehnquist, and O'Connor – rejected Brennan's application of equal protection to the case at hand. But they pointedly expressed "no quarrel" with his threshold determination that "the Fourteenth Amendment applies to aliens who, *after their illegal entry into this country*, are indeed physically 'within the jurisdiction' of a state."[40]

The Court continues to abide by this understanding to this day. In *INS v. Rios-Pineda* (1985), Justice White noted for a unanimous Court that "respondent wife [an illegal alien] had given birth to a child, who, born in the United States, was a citizen of this country."[41] And in *Hamdi v. Rumsfeld* (2004), the plurality opinion noted that alleged Taliban fighter Yaser Hamdi was "[b]orn in Louisiana" and thus "is an American citizen," despite objections by various *amici* that, at the time of his birth, his parents were aliens in the U.S. on temporary work visas.[42]

Repeal proponents seek refuge in earlier judicial precedents. As detailed by the two

39 457 U.S. 202, 211 & n.10 (1982) (quoting Wong Kim Ark, 169 U.S. at 693) (emphasis added); see also 457 U.S. at 215.

40 Id. at 243 (emphasis added).

41 471 U.S. 444, 446. Cf. INS v. Jong Ha Wang, 450 U.S. 139, 145 (1981) (upholding Attorney General's discretion not to suspend deportation for illegal aliens despite hardship for their U.S. citizen children); Johnson v. Eisentrager, 339 U.S. 763, 771 (1950) ("[T]he Court [has] held its processes available to 'an alien who has entered the country, and has become subject in all respects to its jurisdiction, and a part of its population, although alleged to be illegally here.'") (quoting Yamatayo v. Fisher, 189 U.S. 86, 101 (1903)).

42 542 U.S. 507, 510; Eastman/Meese Brief (cited in note 4). Repeal proponents hasten to note that, in dissent, Justices Scalia and Stevens referred to Hamdi as a "presumed" U.S. citizen. Id. at 554 (Scalia, J., dissenting); 2005 House Hearing at 61 (Prof. Eastman). But citizenship was likely "presumed" only because Hamdi might have renounced citizenship through his hostile conduct. 8 U.S.C. § 1481; Afroyim v. Rusk, 387 U.S. 253 (1967); In re Look Tin Sing, 21 F. at 906. In fact, Hamdi subsequently did renounce his citizenship, through a plea agreement that also reserved the possibility that he had renounced citizenship at an earlier time. http://news.findlaw.com/hdocs/docs/hamdi/91704stlagrmnt.html (paragraph 8). It is difficult in any event to believe that Justice Stevens, a member of the *Plyler* majority, agrees with repeal proponents.

dissenting justices in *Wong Kim Ark*, the Court did suggest a contrary view in the *Slaughter-House Cases* (1872), as well as in *Elk v. Wilkins* (1884).

First, repeal proponents cite a single sentence in *Slaughter-House*, stating that "[t]he phrase, 'subject to its jurisdiction' was intended to exclude from its operation children of ministers, consuls, *and citizens or subjects of foreign States* born within the United States."[43] But that case did not actually implicate the Citizenship Clause, so this passage is pure dicta. Moreover, the Court immediately backed away from this assertion just two years later in *Minor v. Happersett*.[44] That same year, Justice Field (a *Slaughter-House* dissenter) adopted *jus soli* while riding circuit in *In re Look Tin Sing*, wholly disregarding the *Slaughter-House* dicta.[45] And the Court itself, in *Wong Kim Ark*, disparaged the *Slaughter-House* statement as "wholly aside from the question in judgment, and from the course of reasoning bearing upon that question," and "unsupported by any argument, or by any reference to authorities."[46]

Elk v. Wilkins fares no better. *Elk* involved Indians, not aliens, and it merely confirmed what we already knew from the 1866 Senate debate: that Indians are not constitutionally entitled to birthright citizenship. Repeal proponents hasten to point out that references to "allegiance" can be found in *Elk*, just as they can be found in the Senate debate. But again, these stray comments do not detract from the analysis. To the contrary, *Elk* specifically endorsed the view, later adopted in *Wong Kim Ark*, that foreign diplomats are uniquely excluded from the Citizenship Clause.[47] That is unsurprising, for both *Elk* and *Wong Kim Ark* were authored by the same justice: Horace Gray. Repeal proponents thus find themselves in the awkward position of endorsing Justice Gray's majority views in *Elk* but distancing themselves from Justice Gray's majority views in *Wong Kim Ark*. Such tension can be avoided simply by taking *Elk* at face value – and by accepting *Wong Kim Ark* as the law of the land.

All three branches of our government – Congress, the courts, and the Executive Branch[48] – agree that the Citizenship Clause applies to the children of aliens and citizens alike.[49] But that may not stop Congress from repealing birthright citizenship. Pro-immigrant members might allow birthright citizenship legislation to be included

43 83 U.S. 36, 73 (emphasis added). This statement is awkward; why bother singling out "ministers" and "consuls," if all "citizens or subjects of foreign States" are excluded? Compare note 29 and accompanying text.

44 88 U.S. 162, 167–68 (1874).

45 21 F. 905.

46 169 U.S. at 678.

47 112 U.S. 94, 101–2.

48 Legislation Denying Citizenship at Birth to Certain Children Born in the United States, 19 Op. O.L.C. 340 (1995); see also Citizenship of Children Born in the United States of Alien Parents, 10 Op. Att'y Gen. 328, 328–29 (1862) (analyzing pre-Fourteenth Amendment common law); Citizenship, 10 Op. Att'y Gen. 382, 396–97 (1862) (same). See generally www.ilw.com/articles/2006,0502-endelman.shtm (collecting authorities in footnotes 21 and 27).

49 What about foreign governments? If "[n]early every industrialized country in the world requires at least one parent to be a citizen or legal immigrant before a child born there becomes a citizen," House Hearing at 3 (Rep. Smith), perhaps repeal proponents should demand that the Citizenship Clause be construed in light of foreign law and international consensus. Roper v. Simmons, 543 U.S. 551, 627 (2005) (Scalia, J., dissenting) (noting various conservative foreign rulings not cited by the Court).

in a comprehensive immigration reform package – believing it will be struck down in court – in exchange for keeping other provisions they disfavor off the bill. Alternatively, opponents of a new temporary worker program might withdraw their opposition, if the children of temporary workers are denied birthright citizenship.[50] Stay tuned: *Dred Scott II* could be coming soon to a federal court near you. GB

50 Lynn Woolley, Myths, Realities of the 14th Amendment, Human Events Online, Mar. 7, 2006, available at www.humaneventsonline.com/article.php?id=13010.